

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JOSEPH WAYNE WEBB,

Petitioner,

v.

ALICE PAYNE,

Respondent.

Case No. C05-5088RJB

ORDER DENYING CERTIFICATE
OF APPEALABILITY

This matter comes before the court on the petitioner's Notice of Appeal. Dkt. 43. The court must consider whether to grant or deny the petitioner a Certificate of Appealability. *See* 28 U.S.C. 2253(c)(3). The court has reviewed the record herein.

PROCEDURAL HISTORY

On November 7, 2006, U.S. Magistrate Judge Karen L. Strombom issued a Report and Recommendation, recommending that the petition for writ of habeas corpus be denied. Dkt. 39. On December 8, 2006, the court adopted the Report and Recommendation and denied the petition. Dkt. 42. Petitioner has now appealed to the U.S. Court of Appeals for the Ninth Circuit. Dkt. 43.

STANDARD FOR GRANTING A CERTIFICATE OF APPEALABILITY

The district court should grant an application for a Certificate of Appealability only if the petitioner makes a "substantial showing of the denial of a constitutional right." 28 U.S.C. §

2253(c)(3). To obtain a Certificate of Appealability under 28 U.S.C. § 2253(c), a habeas petitioner must make a showing that reasonable jurists could debate whether, or agree that, the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further. *Slack v. McDaniel*, 120 S.Ct. 1595, 1603-04 (2000) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 n.4 (1983)). When the court denies a claim on procedural grounds, the petitioner must show that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling. *Slack v. McDaniel*, 120 S.Ct. at 1604.

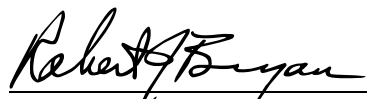
DISCUSSION

The Report and Recommendation carefully and thoroughly reviewed the claims petitioner raised in the petition for writ of habeas corpus. After a *de novo* review of the record, this court concurred with the analysis and conclusions in the Report and Recommendation, and denied the petition on the merits. Petitioner has not shown that reasonable jurists could debate whether, or agree that, the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further. The Certificate of Appealability should be denied.

Accordingly, it is hereby **ORDERED** that a Certificate of Appealability is **DENIED**.

The Clerk is directed to send uncertified copies of this Order to all counsel of record and to any party appearing *pro se* at said party's last known address.

DATED this 5th day of January, 2007.


Robert J. Bryan
United States District Judge